LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
MAR 24 1970
JOHN F. DAVIS, CLERK

Supreme Court of the United States

October Term, 1969

No. 1175

THE FOUNDING CHURCH OF SCIENTOLOGY,

Petitioner,

against

UNITED STATES OF AMERICA,

Respondent.

REPLY BRIEF OF PETITIONER

LEONARD J. LINDEN
135 William Street
New York, New York 10038
Attorney for Petitioner

LINDEN AND DEUTSCH
RONALD DREIER
FREDERICK F. GREENMAN, JR.
110 East 59th Street
New York, New York 10022
Of Counsel

TABLE OF CONTENTS

	PAGE
Introductory Statement	1
Argument	1
Conclusion	5

Supreme Court of the United States

October Term, 1969

No. 1175

THE FOUNDING CHURCH OF SCIENTOLOGY,
Petitioner,

against

UNITED STATES OF AMERICA,
Respondent.

REPLY BRIEF OF PETITIONER

Introductory Statement

Pursuant to Rule 24(4) of this Court, the Founding Church of Scientology submits this Reply Brief to the Brief for the United States in Opposition.

Argument

The Government's attitude, as reflected in its Brief, confirms our contention that the present decision of the Court of Claims establishes a precedent whereby any religion can be subjected to a discriminatory loss of tax

exemption in violation of the First Amendment, as has happened to Scientology in this case.

The Government's Brief gives no credence to, and makes very little mention of, our arguments that the First Amendment requires that all religions be afforded the same exemption from tax or, at a minimum, that before a particular religion can be denied exemption from tax the Government must bear the burden of proving that the secular activities of such religion are markedly different from those of all other religions.

Instead, the Government contends that tax exemption for each religion is an act of "legislative grace" (Resp. Br. p. 12). From that premise the Government further argues that the subjective tests for entitlement to tax exemption, such as inurement of earnings, which are applicable to secular organizations, are equally applicable and can properly be applied to religions. This would be done, as with secular organizations, on a case by case basis.

Since the tests for tax exemption are subjective and since the Government in the first instance must initiate action against a particular religion, the Government's interpretation of the law would provide it with an effective technique of discrimination among religions through selective denials of tax exemption. We submit that such an interpretation violates the First Amendment.

In addition to an erroneous overall position with respect to the legal issues of this case, we submit that the Government has made the following specific erroneous statements and contentions in its Brief:

1. At the outset of its argument, the Government states that "The Court found that L. Ron Hubbard received $108,584 in fees, royalties and compensation for services * * *" (Resp. Br. 8). In fact, the Court found that the fees, royalties and compensation for services which L. Ron Hubbard received totaled $77,460, with the balance of $31,124 being payment of and reimbursement for expenses, repayment of principal on loans and minor royalties (Pet. App. A24-A25).

2. The Government states that "Hubbard rendered only part-time service to Petitioner" (Resp. Br. 8). As support for this statement, the Government contends that "Petitioner does not deny that Hubbard devoted time to these organizations and that he received payments from them" (Resp. Br. 8, n. 2). In fact, Petitioner does deny that L. Ron Hubbard only rendered part-time service to Petitioner and has challenged a similar erroneous conclusion by the Court of Claims by stating "We submit that these statements are totally unsupported and improper" (Pet. 16, n. 8).

3. The Government relies on the 10% payments to L. Ron Hubbard to repeat once again its innuendo that Scientology is a commercial enterprise (Resp. Br. 9). As we have already stated at length, the amounts paid to L. Ron Hubbard constituted reasonable compensation for his efforts (Pet. 16).

4. The Government concedes that "The Court also found private inurement through an analysis like that regularly used by courts to determine the reasonableness of compensation to business officials * * *" (Resp. Br. 10).

The Government contends that such a criterion, which every year produces a substantial number of litigated cases and diverse decisions by the courts, is the proper criterion to apply in determining whether a religion should be afforded tax exemption.

We submit that the First Amendment requires that an objective standard be established to determine whether there has been an inurement of earnings so as to deny tax exemption to a religion. We suggest that the objective standard be whether the secular practices of the religion involved are markedly different from those of all other religions.

If such an objective standard were to be required by this Court, the Government could compile and publish the information as to the secular practices of all religions, i.e., the methods of compensating the leaders, ministers and their families and the amounts of such compensation; the policy with respect to reimbursement of expenses; the making and repayment of loans, the furnishing of food, shelter and other emoluments; and any other secular practices which are deemed relevant. With this type of information available a Trial Court could objectively determine whether a particular religion's secular practices are such as to justify a finding of inurement of earnings to an individual. An Appellate Court reviewing an adverse determination could then readily determine whether there has been discrimination against a particular religion contrary to the First Amendment.

5. The Government's argument that it should not have the burden of proof in this area because the facts are

peculiarly within the possession of the taxpayer (Resp. Br. 13) ignores the methods of discovery and compulsion of testimony which are available to the Government. It is without merit.

Conclusion

A Petition for a Writ of Certiorari should be granted for the reasons stated in the Petition for Certiorari and in this Reply Brief.

Respectfully submitted,

LEONARD J. LINDEN
135 William Street
New York, New York 10038
Attorney for Petitioner

LINDEN AND DEUTSCH
RONALD DREIER
FREDERICK F. GREENMAN, JR.
110 East 59th Street
New York, New York 10022
Of Counsel